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April 15, 2019

Re: Letter of Support for SB 518 (Wieckowski)

BY EMAIL

State Senator Bob Wieckowski
Senate District 10
State Capitol, Room 4085
Sacramento, CA 95814

Dear Senator Wieckowski:

Our organization submits this letter in support of SB 518, a bill introduced by your office that would prevent settlement offers issued under Section 998 of the California Code of Civil Procedure from applying to cases brought under the California Public Records Act ("CPRA"). Such offers encourage settlements in civil cases involving money damages by allowing the offering party to recover litigation costs if the rejecting party fails to obtain a better result at trial.

The CPRA ensures the fundamental right of every person to inspect and to obtain copies of any public record. The right to have state and local agencies comply with the CPRA is so important that it is also guaranteed by the State Constitution at Article I, Section 3. Civil litigation is the only mechanism available to persons seeking to enforce their rights under the CPRA. Therefore public policy, which favors compliance with the CPRA, favors such litigation.

In order to make litigation available to as many people as possible, the legislature has directed that prevailing requesters shall recover their costs and attorney's fees. Without this guarantee it would become far, far more difficult for people seeking to enforce their rights under the CPRA to fund the necessary suits. But the use of 998 offers by public agencies in CPRA litigation tends to undermine this mechanism by potentially frightening petitioners into accepting settlements that include very limited record production out of concern that they will otherwise be liable for respondents' attorney's fees.

Additionally, because CPRA petitions are filed by people seeking to enforce their fundamental right to access records, the courts and the legislature have carefully and thoroughly restricted the circumstances under which respondents can recover their fees and costs from requesters. The law as it now stands disallows fee recovery by a prevailing agency unless the litigation is "clearly frivolous." The use of 998 offers in CPRA petitions potentially overrides this essential element of the law by conceivably allowing public agencies to recover fees from requesters even if the requester is the prevailing party.

Furthermore, in making a 998 offer, the offering public agency is in effect admitting that it is unlawfully withholding records. If the offered settlement is accepted the court will enter judgment to this effect. Public agencies have a duty to release records rather than to withhold them unlawfully. Thus in any case where a respondent would consider making a 998 offer they ought instead to release the records withheld immediately rather than using them as a bargaining chip.

For these reasons and many similar reasons not discussed, 998 offers should not be allowed in CPRA petitions. This bill will clarify the law in this respect and will also promote good public policy by making it less likely that CPRA requesters will be discouraged or prevented from pursuing their fundamental right to access public records in the State of California.

Sincerely,

A handwritten signature in blue ink that reads "Kath Rogers". The signature is fluid and cursive, with the first name "Kath" and last name "Rogers" clearly distinguishable.

Kath Rogers
Executive Director
National Lawyers Guild Los Angeles
cell: 619-886-9259 | NLG-LA.org